

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,
Plaintiff,
v.
B. KIBLER, et al.,
Defendants.

Case No. 1:20-cv-01740-NONE-SKO (PC)

**ORDER TO SHOW CAUSE WHY ACTION
SHOULD NOT BE DISMISSED FOR
FAILURE TO EXHAUST**

21-DAY DEADLINE

Plaintiff Guillermo Trujillo Cruz is a state prisoner proceeding *pro se* in this action brought pursuant to 42 U.S.C. § 1983. He alleges that, on November 14, 2020, Defendants purposefully failed to protect him from an attack by another inmate. (Doc. 1 at 3, 5, 6.)

Plaintiff's complaint is dated November 20, 2020, only six days after the subject incident. (*Id.* at 7.) The short duration of time between the incident and the initiation of this action "strongly suggests that [he] did not ... attempt to comply with the exhaustion requirement." *Howell v. Selliers*, No. 1:18-cv-00420-EPG, 2018 WL 4173724, at *2 (E.D. Cal. 2018). It would be nearly impossible to complete multiple levels of administrative review in only six days.

Additionally, Plaintiff attaches to his complaint responses to grievances filed *prior to* November 14, 2020. The inclusion of these responses, coupled with the *absence* of any response regarding the November 14 incident, also suggests that Plaintiff failed to file a grievance regarding the incident, or to receive a response to a grievance, before he filed his complaint.

1 The Prison Litigation Reform Act (PLRA) provides that “[n]o action shall be brought with
2 respect to prison conditions under … any other Federal law … by a prisoner confined in any jail,
3 prison, or other correctional facility until such administrative remedies as are available are
4 exhausted.” 42 U.S.C. § 1997e(a). Exhaustion of administrative remedies is mandatory and
5 “unexhausted claims cannot be brought in court.” *Jones v. Bock*, 549 U.S. 199, 211 (citation
6 omitted). The exhaustion requirement applies to all inmate suits relating to prison life, *Porter v.*
7 *Nussle*, 534 U.S. 516, 532 (2002), regardless of the relief sought by the prisoner or offered by the
8 administrative process, *Booth v. Churner*, 532 U.S. 731, 741 (2001). Inmates are required to
9 “complete the administrative review process in accordance with the applicable procedural rules,
10 including deadlines, as a precondition to bringing suit in federal court.” *Woodford v. Ngo*, 548
11 U.S. 81, 88, 93 (2006). Generally, failure to exhaust is an affirmative defense that the defendant
12 must plead and prove. *Jones*, 549 U.S. at 204, 216. However, courts may dismiss a claim if
13 failure to exhaust is clear on the face of the complaint. *See Albino v. Baca*, 747 F.3d 1162, 1166
14 (9th Cir. 2014).

15 It appears that Plaintiff failed to exhaust administrative remedies prior to initiating this
16 action. Accordingly, the Court ORDERS Plaintiff, within 21 days of the date of service of this
17 order, to show cause in writing why this action should not be dismissed for his failure to exhaust.
18 Alternatively, Plaintiff may file a notice of voluntary dismissal. Failure to comply with this order
19 will result in a recommendation that this action be dismissed.

21 || IT IS SO ORDERED.

22 || Dated: **January 25, 2021**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE